BEST PRACTICES FOR WATER QUALITY TRADING
JOINT REGIONAL AGREEMENT ~~ON WATER QUALITY TRADING~~

Draft Best Practice, ~~May 9~~June ~~26~~7th, 2013

This *Draft Best Practice* document was ~~derived~~ based on discussion at the April 9th and 10th interagency workshop and feedback received on the circulated *Discussion Draft* and *Meeting Draft*. It is intended to represent apparent points of consensus among the ~~group.~~attendees as to the guiding principles underlying water quality trading. A number of the draft best practice "guiding principles" below reflect the 2003 U.S. EPA Trading Policy. Where there is overlap, reference has been made to the policy. This document includes additional guiding principles recommended by some of the project partners, and ~~-~~suggested language (that goes beyond the April 2013 discussions) intended to move the conversation forward. The added language can be refined or removed through future review and comments. When acceptable to all parties, the Draft Best Practice will be posted on the web. ~~Come November, or other agreed upon consensus point, Draft Best Practice documents~~These draft best practice guiding principles only represent recommendations. Inclusion of these practices in the JRA document will not ~~trigger~~ bind ~~states~~any party to their implementation. Upon completion of the JRA, participating states may ~~be changed to Pilot Best Practices~~choose to incorporate these draft best practice guiding principles into their own trading program rules or guidance, following their state's procedure for public participation and input.

Commented [kg1]: Not the June sessions also?

Guiding Principles for Water Quality Trading

Water links us in ways that underpin healthy communities, economies, and ecosystems. When Congress passed the Clean Water Act[1] (CWA) in 1972, it aimed to protect those links in ways that would restore the nation's waters to levels that would support fishing, swimming, and the other beneficial uses we rely on. Water quality trading is just one tool of many to help achieve the goals of the CWA ~~-~~and other public objectives.[2] Trading is not appropriate for many water quality challenges, and its efficacy must be evaluated in every watershed. When designed well and combined with other tools, however, trading programs can help achieve water quality goals in a way that is beneficial for landowners, communities, and the environment.

One of the primary goals of trading, as identified in ~~USEPA's~~United States Environmental Protection Agency's (EPA) 2003 Water Quality Trading Policy[3] (2003 EPA Trading Policy), is to encourage "voluntary trading programs that facilitate implementation of [total maximum daily loads (TMDLs~~)],)~~] reduce the costs of compliance with CWA regulations, establish incentives for voluntary reductions and promote watershed-based initiatives."[4] The 2003 EPA Trading Policy

[1] Federal Water Pollution Control Act, 33 U.S.C. § 1251, et. seq. (2006).
[2] EPA, Water Quality Trading Policy, 68 Fed. Reg. 1608, 1609 (Jan. 13, 2003) ("Water quality trading is an approach" to "[f]inding solutions to [] complex water quality problems."), *available at* http://waterepa.gov/type/watersheds/trading/tradingpolicy.cfm.
[3] ~~EPA, Water Trading Policy, 68 Fed. Reg. 1608 (Jan. 13, 2003)~~
[4] *Id.*

describes how water quality trading can comply with different requirements of the CWA and its implementing regulations. Recognizing that the CWA and its implementing regulations do not directly address water quality trading, the design of water quality trading programs should focus on how they can best support achievement of particular CWA goals.[5] Implementing TMDLs with greater efficiency and timeliness, while at the same time recognizing that flexibility is the key to innovative solutions, is where water quality trading shows its greatest potential.

~~The following guiding principles are derived from the 2003 Policy, USEPA's 2007 Water Quality Trading Toolkit for Permit Writers, existing state agency trading documents, and Willamette Partnership's General Crediting Protocol.~~ Individual trading programs will inevitably face many unique situations and issues~~, these~~. These guiding principles are meant to anchor state agencies and other stakeholders with a cohesive approach to thinking through the tough design issues when establishing a water quality trading program where best practices are not clearly defined or there is a need for a case-by-case decision.

Water quality trading is generally supported when it is consistent with the 2003 EPA Trading Policy and where it:

I. Allows sources to comply with their allocations and permit effluent limits in a way that ~~is directly linked to improving the beneficial uses that the TMDL and permit are based on.~~;

~~**II. Achieves pollution reductions and progress towards water quality standards more quickly than would have occurred without trading.**~~

a. Is linked directly to ~~improving~~meeting applicable water quality standards, including the beneficial uses that the TMDL and permit are designed to protect, and in addition, where possible ~~also~~:

~~a.~~b. Addresses causes of pollutant of concern, while not negatively affecting other parts of the environment;

~~b.~~c. Achieves more pollution reduction than would have occurred without trading over a comparable period of time;

d. ~~Provides auxiliary~~ "[A]chieve[s] water quality and environmental benefits greater than would otherwise be achieved under more traditional regulatory approaches[;]"[6]

~~c.~~e. "[A]chieve[s] ancillary environmental benefits beyond the required reductions in specific pollutant loads, such as ~~improvements in fish~~the creation and restoration

[5] *Id.* at 1610 ("*CWA Requirements*. Water quality trading and other market-based programs must be consistent with the CWA.").
[6] *Id.* at 1609.

of wetlands, floodplains and wildlife[, fish] and/or waterfowl habitat, reduction of multiple pollutants, etc.~~;~~.;"[7] and

~~d.~~f. Provides for the long-term stewardship and management of practices that produce water quality benefits~~.~~;

~~III.~~II. Is based on sound science;

a. Bases program goals, credit quantification methods and adaptive management systems on sound science; and
b. Uses monitoring and evaluation to regularly improve and report on the progress toward water quality goals~~.~~;[8]

~~IV.~~III. Provides ~~for~~ sufficient accountability that promised water quality improvements are delivered;

a. Fosters transparent information on program rules and processes, location and volume of transactions, and effectiveness of the program over time;
b. Fosters accountability by clearly articulating who is responsible for producing which water quality improvements, providing a mechanism for identifying and correcting problems, and allowing for clear dispute resolution;
~~c. Fosters credibility through inclusive and open decision-making and adaptive management; and~~
c. Engages "public participation at the earliest stages and ; and throughout development programs[,] strengthen[s] program effectiveness and credibility[;]"[9]
d. Provides sufficient information for regulatory agencies and the public to regularly determine that certified trades and individual credits comply with a permittee's waste load allocation and effluent limitations.

~~**V. Makes wise use of agency financial resources in securing compliance**~~

~~VI.~~IV. Achieves environmental goals with predictable and reasonable transaction costs~~; and~~

~~Uses, wherever possible, consistent credit quantification methods, processes and tools to lower the costs of program design, approval, and operation.~~

Trading is generally NOT supported where it:

Commented [HB2]: I don't believe this section is necessary. These are issues that should be addressed by the market.

(BOBBY) I STILL THINK THAT INCLUSION OF PRINCIPLES AROUND EFFICIENT USE OF RESOURCES IS IMPORTANT—AND CENTRAL TO THE EPA POLICY. I GET THAT IT SHOULDN'T DRIVE CONSIDERATIONS, BUT I THINK IT NEEDS TO BE THERE.

WHAT IF WE JUST USED THIS PRINCIPLE?

[7] *Id.* at 1610.
[8] *Id.* at 1612 ("*Program Evaluations.* Periodic assessments of environmental and economic effectiveness should be conducted and program revisions made as needed.").
[9] *Id.*

~~VII.~~V. **Produces localized water quality problems, such as**

a. Thermal barriers to salmonid migration, thermal shock/lethality for salmonids, or impairment of known salmonid spawning habitat; ~~and~~
b. Algal blooms and areas of low dissolved oxygen caused by nutrient hotspots~~.~~; or
c. Exceedance of "an acute aquatic life criteria within a mixing zone or a chronic aquatic life or human health criteria at the edge of a mixing zone using design flows specified in the water quality standards[;]"[10]

~~VIII.~~VI. **Circumvents the installation of minimum treatment technology required by federal or state regulations at the site of a point source;**

~~IX.~~VII. **Is not supported by adequate science;**
~~**Relies**~~
~~X.~~VIII. **Over-relies on economic justifications instead of water quality goals as the basis for undertaking trading;**

~~XI.~~IX. **Does not have adequate means of ensuring accountability;** ~~**or**~~

~~XII.~~X. **Is inconsistent with the relevant provisions of a TMDL, as described in the 2003 Policy~~.~~;**

XI. "[W]ould cause an impairment of existing or designated uses, [or] adversely affect water quality at an intake for drinking water supply[;]"[11] or

XII. "[W]ould delay implementation of a TMDL approved or established by EPA or [] would cause the combined point source and nonpoint source loadings to exceed the cap established by a TMDL."[12]

[10] *Id.*
[11] *Id.* at 1611.
[12] *Id.* at 1610.